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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re TERRY W., Jr., et al.,

Persons Coming Under the Juvenile Court Law.

B222543

(Los Angeles County
Super. Ct. No. CK47377)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TERRY W., Sr.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Margaret Henry, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant
County Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Terry W., Sr. (Terry) is a father who appeals from a juvenile dependency court order conditionally placing his three minor children in their mother's home after they were adjudged dependents of the juvenile court based on their mother's and stepfather's physical abuse of their older half-sibling. (Welf. & Inst. Code, §§ 300, 361.)¹ Terry contends substantial evidence does not support the decision to return the three children to the mother's home. We disagree, and affirm the judgment of the dependency court.

FACTUAL AND PROCEDURAL BACKGROUND

Terry is the father of Terry W., Jr. (age 13), T.W. (age 12), and Tyrese W. (age 10). Terry and the children's mother, K.H. (Mother), divorced in 2000, and subsequently had an acrimonious relationship. In 2002, Terry accused Mother of physically abusing the three children, but an investigation by the Department of Children and Family Services (DCFS) concluded that Terry was trying to coerce the children into making false accusations of abuse. Terry initially shared joint custody of the children, but has had little contact with them since at least 2005. According to Terry, this was because Mother tried to keep him from the children.

The three children most recently came to the attention of DCFS in early 2010, based on allegations of physical abuse of the children's 16-year old half-sibling D. DCFS filed a section 300 dependency petition with respect to D. as well as Terry Jr., T.W., and Tyrese, and detained the four children. The petition alleged that Mother and her husband (Stepfather) physically abused D., and that he and his three half-siblings were at risk of harm. The petition also alleged an episode of

¹ All further statutory references herein are to the Welfare and Institutions Code.

domestic violence in which Stepfather struck Mother. There were no allegations that Terry Jr., T.W., or Tyrese had been physically abused or neglected. At the detention hearing, the dependency court ordered that D., Terry Jr., T.W., and Tyrese temporarily remain in shelter care pending disposition of their case.

Evidence Before the Dependency Court

According to D., he and Mother had been at odds for some time. Recently, she had locked him out of the house after an argument and he went to live with his cousin for two weeks. When he returned home, they again began fighting, and she hit him with a plastic bat. He also recounted a prior incident where Mother had hit him with a wooden cane. He stated that he and Stepfather had not gotten along ever since Stepfather hit Mother, and that Stepfather frequently hit him with his fists. However, D. indicated that Mother and Stepfather were appropriate with Terry Jr., T.W., and Tyrese, and that these younger siblings were not abused or neglected.

Terry Jr., T.W., and Tyrese all stated that they had never been abused or neglected by Mother or Stepfather, but that D. and Mother frequently argued. They all indicated that they were anxious to leave foster care and go home.

Stepfather admitted hitting Mother on one instance, but said he had since attended anger management courses. He denied that he physically abused D., but said he had sometimes restrained him when the child was fighting with Mother. He also said that D. had been smoking marijuana for some time. Mother similarly noted that D. was abusing marijuana. She also stated that D. had an upcoming juvenile court hearing on charges that he had hit her. After initially denying that she had hit D., she admitted hitting him with a plastic bat. She indicated that she

wanted Terry Jr., T.W., and Tyrese returned home, but that she did not know how to handle D. and needed the help of DCFS.

DCFS records show that Mother's oldest child, Dejannae B. (now an adult), was the subject of dependent proceedings in 2001, during which allegations of physical abuse by Mother were sustained. Dejannae's out-of-control behavior led DCFS to terminate its services for Dejannae and she was declared a ward of the juvenile court in 2002.

The director of the middle school attended by Terry Jr. and T.W. submitted a letter in support of Mother, indicating that she was a caring and supportive parent who had worked successfully to improve her children's behavioral and academic performance at school. Mother was reported to be very active at the children's school, regularly exceeding the 40-hour volunteer commitment and attending school meetings and parent-teacher conferences. The youth pastor at the family's church also submitted a letter indicating that Mother regularly attended church with her children, and praising Mother's care for her children.

January 29, 2010 Hearing

The dependency court held a jurisdictional hearing on January 29, 2010, and after striking some of the allegations in the section 300 petition, sustained the petition as amended, finding: (1) on one occasion Mother struck D. on the face and arms with a plastic bat and, on another occasion, struck him with a wooden cane; and (2) Stepfather struck D. with his fists, and Mother knew of this physical abuse and failed to take action to protect D. The court found that D. as well as Terry Jr., T.W., and Tyrese were at risk of physical harm and abuse and failure to protect, and declared all the minors dependent children under section 300, subdivisions (a) and (b).

At the same hearing, the dependency court was also prepared to issue a disposition order regarding the placement of the children. In its Disposition Report, DCFS had initially recommended that Terry's children be removed from Mother's custody, in part because the caseworker was concerned that Mother and Stepfather minimized the domestic violence incident between them and ignored the risk of further domestic violence, and Stepfather was resistant to accepting family maintenance services. However, Mother subsequently indicated that Stepfather would be willing to accept family maintenance services, and said if he did not, she would make arrangements for him to move out of the home so that she could accept services and be in full compliance with the DCFS case plan and court orders. While DCFS continued to recommend that D. remain in foster care, it ultimately recommended to the court that Terry's children be returned to Mother's home on the condition that she and Stepfather participate in extensive family maintenance services.

Before the court made a final order as to placement of the children, however, Terry told the court he was troubled by the DCFS proposal that Terry Jr., T.W. and Tyrese be returned to Mother's home. He requested a continuance so that he could have an opportunity to review the DCFS reports documenting the situation in Mother's home. The court granted his request, and the children remained in foster care in the interim.

February 4, 2010 Hearing

At the continued hearing on February 4, 2010, Terry voiced his concerns about the pattern of abuse in Mother's home as set forth in the DCFS reports. He again objected to the recommendation by DCFS that his children be returned to

Mother's home. Terry did not request that he have custody of the children, but rather requested that they be placed with maternal relatives.

The court agreed with Terry that the children's exposure to violence in Mother's home was a cause for concern. The court noted that "in terms of domestic violence . . . things have improved," but Mother tended to resort to violence in dealing with her teenage children. The court determined Terry Jr., T.W., and Tyrese would be safe in Mother's home at that point, but Mother and Stepfather would need to make some "big changes" as the children approached their teenage years. The court believed the children were suffering distress in foster care, and determined that their return to Mother's home was preferable to foster care.

The court thus adopted the DCFS recommendation that Terry Jr., T.W., and Tyrese be returned to Mother's home. Mother's retention of custody was conditioned on her participation in family maintenance services, including attending individual counseling for domestic violence, conjoint counseling with Stepfather, and a parent education course on difficult teenagers. No services were ordered as to Terry because he was not requesting custody of the children. However, the court ordered monitored visits between Terry and his children, with DCFS given discretion to liberalize those visits.

As for D., the court found that there was a substantial danger that he would experience physical and emotional harm if he were returned to Mother's home, and he was ordered removed from her custody and placed in foster care, with family reunification services.

Terry has timely appealed the disposition order conditionally returning Terry Jr., T.W., and Tyrese to Mother's home.

DISCUSSION

I. *Standing*

Before reaching the merits, we address DCFS's contention that Terry lacks standing to appeal the dependency court's order conditionally placing the children in Mother's home. We liberally construe the issue of standing, resolving doubts in favor of the right to appeal. (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 540.) Although Terry does not have custody of his children, his parental rights have not been terminated. As such, he maintains "a fundamental interest in [the children's] companionship, custody, management and care" sufficient to give him standing to challenge the dependency court's order. (*In re H.G.* (2006) 146 Cal.App.4th 1, 10.)

II. *Merits*

Terry challenges the dependency court's order conditionally returning his children to Mother's home.² We review the dependency court's dispositional findings for substantial evidence, including those findings that must be supported by clear and convincing evidence. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574, 578.) "When a child is adjudicated dependent, the dependency court has broad discretion to make any reasonable orders for the care and support of the child." (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1087, fn. 12.) The dependency court's determination "'will not be disturbed unless it exceeds the bounds of reason. [Citation.]' [Citation.]" (*In re E.B., supra*, 184 Cal.App.4th at

² While in the proceedings below Terry argued that the children should be placed with a maternal relative, on appeal he does not specifically address where he believes the children should have been placed in lieu of Mother's home.

p. 575.) We hold that the dependency court's dispositional order is supported by substantial evidence.

Terry suggests that, given the findings of the court that his children were at risk of physical harm in Mother's home such that they fell within dependency jurisdiction under section 300, the court could not reasonably conclude at the dispositional phase that the children could safely be returned to Mother. He is incorrect.

“[I]n dependency proceedings the burden of proof is substantially greater at the dispositional phase than it is at the jurisdictional phase if the minor is to be removed from his or her home.” (*In re Henry V.* (2004) 119 Cal.App.4th 522, 528.) At the dispositional phase, before the court may order a child physically removed from his or her parent's custody, “it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917; see § 361, subd.

(c)(1).) Requiring such heightened proof in order to remove a child from the home at the dispositional phase “is an essential aspect of the presumptive, constitutional right of parents to care for their children.” (*In re Henry V.*, *supra*, 119 Cal.App.4th at p. 525.) On the other hand, to find that a minor is a person subject to dependency jurisdiction under section 300, the dependency court need only find by a preponderance of the evidence that a child suffered or is at substantial risk of suffering harm at home. (*In re A.S.* (2009) 180 Cal.App.4th 351, 361.) Therefore, there is no logical inconsistency in the dependency court's decision to sustain jurisdiction under section 300 and temporarily order a child removed from the home and its inability to find at the disposition phase, by clear and convincing

evidence, that no reasonable steps could be taken that would protect the child at home.³ (See, e.g., *In re Basilio T.* (1992) 4 Cal.App.4th 155, 171.)

We turn to whether substantial evidence supported the court's decision to conditionally place Terry's children in Mother's home. "In determining whether a child may be safely maintained in the parent's physical custody, the court may consider the parent's past conduct and current circumstances, and the parent's response to the conditions that gave rise to juvenile court intervention." (*In re Maria R.* (2010) 185 Cal.App.4th 48, 70.)

The dependency court was entitled to consider that there were no allegations that Terry's children had been abused; the abuse allegations concerned the children's half-brother D. (and, in 2001, an older half-sister). Even D. stated that Mother and Stepfather were appropriate with his younger siblings, and school and church leaders voiced their support for Mother's parenting of these younger siblings.

Further, although Mother and Stepfather initially may have been resistant to DCFS's concerns about their parenting and the domestic violence risk in the home, they ultimately were receptive to participating in extensive services designed to reduce the risk of violence in the home. Mother agreed to participate in, and by the time of the disposition hearing had already begun to attend, a parent education course, individual counseling on domestic violence and physical abuse, and conjoint counseling with her husband to address the same issues. In part based on this appropriate reaction to the dependency intervention, DCFS recommended that

³ Terry mistakenly asserts that the dependency court's jurisdictional findings are prima facie evidence that his children cannot safely be returned to Mother's home. Only in the case of "severe physical abuse" of a child under five years of age does the adjudication of dependency "constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent." (§§ 300, subd. (e); 361, subd. (c)(1).)

Terry's children be returned to Mother's home, and the dependency court reasonably adopted that recommendation. (Compare *In re Cole C.*, *supra*, 174 Cal.App.4th at p. 918 [finding minor could not safely be returned to home in part because father did not commit to participate in services] with *In re Basilio T.*, *supra*, 4 Cal.App.4th at p. 172 [where record showed parents agreed to participate in family counseling services, dependency court erred in failing to consider whether minors could have been returned to the parents under strict supervision].)

Finally, the dependency court also reasonably considered the children's repeated pleas to be allowed to come home from foster care to Mother. "While a child's wishes are not determinative of her best interests" (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432), evidence that the child wants to return to live with her mother "constitutes powerful demonstrative evidence that it would be in her best interest to allow her to do so." (*Ibid.*) At the disposition hearing, the dependency court noted that, although it had concerns about the children's exposure to violence in the home, it was concerned with the psychological detriment the children would suffer if they remained in foster care. The court concluded that the children were safe at Mother's home for the time being, and imposed stringent conditions on Mother and her husband designed to protect the children as they approached their teenage years.

In sum, substantial evidence supported the dependency court's decision that Terry's children should be returned to Mother instead of remaining in foster care or being placed with another relative.

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.